

# THE BENDAU LAW FIRM, PLLC

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## Exhibit C

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Dawn Bruce, et al.,

Plaintiffs,

vs.

Secure Lending, Inc., et al.,

Defendants.

No. 1:17-cv-01172-SO

**DECLARATION OF CLIFFORD P.  
BENDAU, II IN SUPPORT OF  
PLAINTIFFS 'MOTION FOR AWARD  
OF ATTORNEYS' FEES AND COSTS**

I, Clifford P. Bendau, II, declare:

1. I am the managing attorney of The Bendau Law Firm, PLLC, one of the law firms serving as Plaintiffs' Counsel herein. I have been one of the lawyers primarily responsible for the prosecution of Plaintiff's claims in this matter. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

2. I am a member in good standing of the bar of the States of Arizona, Ohio, and Colorado; the U.S. District Courts for the Districts of Arizona, Colorado, and the Northern and Southern Districts of Ohio; and the Ninth and Tenth Circuit Courts of Appeals.

3. This Declaration is submitted in support of Plaintiffs' Motion for Award of Attorneys' Fees and Costs.

4. Dawn Bruce first approached my firm in May 2017 seeking legal advice as to whether the Defendants had improperly classified her and her co-workers as independent contractors and exempt from the FLSA's overtime pay requirements. Plaintiffs' decision to retain Plaintiffs' Counsel was based on my firm and James Simon's experience pursuing claims

under the FLSA. Throughout the litigation, Plaintiffs' Counsel has maintained a close and productive relationship with the Named Plaintiffs.

5. **Plaintiffs' Counsel's Attorneys' Fees.** The Settlement provides that Defendants shall Plaintiffs' reasonable attorneys' fees in an amount determined by this Court. Plaintiffs also seek reimbursement of their out-of-pocket expenses incurred in prosecuting this matter.

6. This litigation involved a significant degree of risk and complexity. This matter has required my firm to spend substantial sums and hours on this litigation that could have been spent on other fee-generating matters. I expended this effort without any guarantee of recovery. At various times during the litigation, this lawsuit has consumed a significant percentage of my time, along with the time of James L. Simon (whose qualifications are summarized in his own concurrently filed declaration).

7. As of May 8, 2018, Plaintiffs' Counsel has expended 114.3 hours on this matter. Specifically, my firm has expended 65.8 hours, and James Simon has expended 48.5 hours. Attached to Plaintiffs' Motion for Award of Attorneys' Fees is a true and correct accounting by individual of the hours, billing rate, and lodestar for each biller's work on this matter. The firms' total lodestar for these hours amounts to \$34,290. Going forward, my firm and James Simon anticipate spending additional time drafting and filing a Reply brief in support of this Motion for Award of Attorneys' Fees.

8. The specific work performed by firm in prosecuting this action has included: interviewing Plaintiffs and their co-workers and researching their claims; reviewing documents provided by Plaintiffs; developing the strategy for prosecuting the claims in this case; calculating potential damages; preparing and filing the Complaint; effecting service; communicating with opposing counsel; reviewing documents produced by the parties; preparing a Joint Case

Management Report with opposing counsel; preparing for a case management conference; meeting and conferring regarding discovery; participating in a mediation; negotiating a settlement, including amounts and non-monetary terms; negotiating, drafting, and revising the settlement documents; conferring with Defendants' Counsel regarding the Joint Motion for Approval of FLSA Settlement; responding to Plaintiffs' inquiries throughout the litigation and settlement; and preparing and filing this Motion for Award of Attorneys' Fees.

9. It is my firm's practice to maintain contemporaneous time records setting forth the amount of time spent (rounded to the nearest one-tenth of an hour) on each task and each case, and with explanatory statements regarding the actual task involved. My usual practice, and the usual practice of Christopher J. Bendau, is to record on daily time logs only those hours that my firm would customarily bill to a commercial client paying on an hourly basis. The time logs for this matter (including all billers) have been carefully reviewed, and any biller's time that may have been duplicative or inefficient is deleted from the billing records. While we exercised billing judgment after recording my time in this case, and the time of Christopher J. Bendau, I also exercised billing judgment before recording my time, because I routinely did not enter time that I thought might be duplicative, and I reduced time for work that I thought may have been inefficient.

10. From the outset, the prosecution of any FLSA case involves significant financial risks for counsel. I undertook this matter solely on a forty percent contingent basis, with no guarantee of recovery of fees or even reimbursement of costs, and no guarantee as to the potential duration of this litigation.

11. My firm has not received any payment for accrued attorneys' fees or costs. My current hourly rate is \$325 per hour. Christopher J. Bendau's current hourly rate is \$300 per

hour. These hourly rates are commensurate with my experience level, and are well within the standard hourly rates charged by other law firms in the Phoenix Metropolitan Area. However, given that the parties have stipulated in this case to an hourly rate of \$300 for Plaintiffs' Counsel, we seek that hourly rate exclusively.

12. Christopher Bendau and I practice in Cleveland, Ohio, and Phoenix, Arizona and focus their entire practice on Plaintiffs' FLSA litigation. They have been awarded an hourly rate of \$300 in similar matters. *See Hayden v. Arizona Pool & Fountain Guy's LLC*, Case No. 2:16-00840-SRB, doc. No. 143, at \*3, fn. 2 (D. Ariz. March 19, 2018) (awarding both Clifford and Christopher Bendau an hourly rate of \$300) (a copy of this Order has been attached as "Exhibit A"); *see also O'Neal, et al. v. America's Best Tire LLC, et al.*, 2017 WL 1311670, at \*4 (D. Ariz., April 5, 2017) (confirming that an hourly rate of \$300 is reasonable awarding Clifford Bendau an hourly rate of \$300).

13. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to mine in the Phoenix and Cleveland markets. Based on that information, I believe that these rates are fully consistent with the market rates for attorney with comparable expertise, experience, and qualifications. Based on the information I have, I believe that the rates that my firm charges are reasonable and appropriate fees for attorneys with comparable expertise, experience, and qualifications.

#### **Plaintiff's Counsel's Background and Experience**

14. I have been a member in good standing of the State Bar of Arizona for five years since being admitted to the bar in May 2013. During my tenure as a litigator, the entirety of my practice has focused exclusively on plaintiffs' wage and hour employment litigation. I have also been a member in good standing of the State Bar of Ohio for more than five years since being

admitted to the bar in November 2012. I have also been a member in good standing of the State Bar of Colorado for more than a year since being admitted to the bar in November 2016. I am also licensed to practice in the U.S. District Courts for the Districts of Arizona, Colorado and the Northern and Southern Districts of Ohio, as well as the U.S. Courts of Appeals for the Ninth and Tenth Circuit.

15. With the exception of a few matters, the entirety of my practice has been devoted to plaintiffs' federal and state wage and hour litigation under the Fair Labor Standards Act ("FLSA"). I have litigated more than 100 lawsuits for employees during this time frame, including more than 75 in the District of Arizona. I have also been lead counsel on approximately 15 FLSA collective action matters in both the District of Arizona and the Northern District of Ohio. All of my cases are contingency cases.

16. I attended Arizona State University for undergrad and successfully earned my bachelor's degree in English Literature. Following undergrad, I earned my *Juris Doctor* from Cleveland State University's Marshall College of Law in 2012. I passed the Ohio bar that same year and was licensed to practice law in Ohio in November 2012. I then passed the Arizona bar in 2013 and was licensed to practice law in Arizona in May 2013.

17. I began practicing state and federal employment wage and hour law in November 2013, and have represented numerous plaintiffs in both the Maricopa County Superior Court and the Federal District Court for the District of Arizona. I also have represented numerous plaintiffs on federal wage and hour matters in the Northern District of Ohio and the District of Colorado. I was licensed to practice in the United States Court of Appeals for the 9<sup>th</sup> Circuit in April 2015 and the 10<sup>th</sup> Circuit in February 2016. I also currently represent numerous plaintiffs on a novel FLSA issue in the Ninth Circuit Court of Appeals. I am currently preparing with my co-counsel

team for an oral argument on a rehearing en banc on that issue, which will be heard March 20, 2018. I obtained a reversal on the same issue in the Tenth Circuit Court of Appeals.

18. I am the managing partner of a law firm located in Phoenix, Arizona, with two attorneys (including myself). My law firm, The Bendau Law Firm, focuses exclusively on plaintiffs' state and federal employment wage and hour litigation, primarily under the FLSA. I was recently selected as a "Rising Star" by Super Lawyers in the area of plaintiffs' employment litigation for the second consecutive year, which is an accolade reserved for no more than 2.5% of lawyers under the age of 40 in my practice area.

19. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

RESPECTFULLY SUBMITTED on May 8, 2018.

**THE BENDAU LAW FIRM, PLLC**

By: /s/ Clifford P. Bendau, II  
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